

Senate File 198 - Introduced

SENATE FILE 198
BY COMMITTEE ON VETERANS
AFFAIRS

(SUCCESSOR TO SF 79)

A BILL FOR

1 An Act relating to assignment of visitation or physical care
2 parenting time for children of military service members on
3 active duty and including effective date provisions.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 598.41D, Code 2011, is amended to read
2 as follows:

3 **598.41D Assignment of visitation or physical care parenting**
4 **time — parent serving active duty — family member.**

5 1. Notwithstanding any provision to the contrary, a parent
6 who has been granted court-ordered visitation with the parent's
7 minor child may file an application for modification of a
8 decree or a petition for modification of an order regarding
9 child visitation, prior to or during the time the parent is
10 serving active duty in the military service of the United
11 States, to temporarily assign that parent's visitation ~~rights~~
12 to a family member of the minor child, as specified by the
13 parent. The application or petition shall be accompanied by an
14 affidavit from the family member indicating the family member's
15 knowledge of the application or petition and willingness to
16 exercise the parent's visitation ~~rights~~ during the parent's
17 absence. The application or petition shall also request
18 any change in the visitation schedule necessitated by the
19 assignment.

20 2. Notwithstanding any provision to the contrary, a
21 parent who has been granted court-ordered physical care or
22 joint physical care of the parent's minor child may file an
23 application for modification of a decree or a petition for
24 modification of an order regarding child custody, prior to
25 or during the time the parent is serving active duty in the
26 military service of the United States, to temporarily assign
27 the parent's physical care parenting time to a family member of
28 the minor child, as specified by the parent. The application
29 or petition shall be accompanied by an affidavit from the
30 family member indicating the family member's knowledge of
31 the application or petition and willingness to exercise the
32 parent's physical care parenting time during the parent's
33 absence. The application or petition shall also request
34 any change in the physical care parenting time schedule
35 necessitated by the assignment.

1 ~~2.~~ 3. a. If the active duty of a parent affects the
2 parent's ability or anticipated ability to appear at a
3 regularly scheduled hearing, the court shall provide for an
4 expedited hearing in matters instituted under this section.

5 b. If the active duty or anticipated active duty of a parent
6 prevents the parent from appearing in person at a hearing, the
7 court shall provide, upon reasonable advance notice, for the
8 parent to present testimony and evidence by electronic means
9 in matters instituted under this section. For the purposes of
10 this paragraph, "*electronic means*" includes communication by
11 telephone, video teleconference, or the internet.

12 ~~3.~~ 4. a. The court may grant the parent's request for
13 temporary assignment of visitation or physical care parenting
14 time and any change in the visitation or physical care
15 parenting time schedule requested if the court finds that such
16 assignment of visitation or physical care parenting time is in
17 the best interest of the child.

18 b. In determining the best interest of the child, the court
19 shall ensure all of the following:

20 (1) That the specified family member is not a sex offender
21 as defined in section 692A.101.

22 ~~(2) That the specified family member does not have a history~~
23 ~~of domestic abuse, as defined in section 236.2. In determining~~
24 ~~whether a history of domestic abuse exists, the court's~~
25 ~~consideration shall include but is not limited to commencement~~
26 ~~of an action pursuant to section 236.3, the issuance of a~~
27 ~~protective order against the individual or the issuance of a~~
28 ~~court order or consent agreement pursuant to section 236.5,~~
29 ~~the issuance of an emergency order pursuant to section 236.6,~~
30 ~~the holding of an individual in contempt pursuant to section~~
31 ~~664A.7, the response of a peace officer to the scene of~~
32 ~~alleged domestic abuse or the arrest of an individual following~~
33 ~~response to a report of alleged domestic abuse, or a conviction~~
34 ~~for domestic abuse assault pursuant to section 708.2A.~~

35 ~~(3) That the specified family member does not have a record~~

1 ~~of founded child or dependent adult abuse.~~

2 ~~(4)~~ (2) That the specified family member has an established
3 relationship with the child and assigning visitation or
4 physical care parenting time to the specified family member
5 will provide the child the opportunity to maintain an ongoing
6 family relationship that is important to the child.

7 ~~(5)~~ (3) That the specified family member ~~is able~~
8 demonstrates an ability to personally and financially support
9 the child and will support the child's relationship with both
10 of the child's parents during the assigned visitation or
11 physical care parenting time.

12 c. In determining the best interest of the child, the court
13 shall consider:

14 (1) Whether the specified family member has a history of
15 domestic abuse, as defined in section 236.2. In determining
16 whether a history of domestic abuse exists, the court's
17 consideration shall include but is not limited to commencement
18 of an action pursuant to section 236.3, the issuance of a
19 protective order against the individual or the issuance of a
20 court order or consent agreement pursuant to section 236.5,
21 the issuance of an emergency order pursuant to section 236.6,
22 the holding of an individual in contempt pursuant to section
23 664A.7, the response of a peace officer to the scene of
24 alleged domestic abuse or the arrest of an individual following
25 response to a report of alleged domestic abuse, or a conviction
26 for domestic abuse assault pursuant to section 708.2A.

27 (2) Whether the specified family member has a record of
28 founded child or dependent adult abuse.

29 ~~4.~~ 5. An order granting assignment of visitation ~~rights~~
30 or physical care parenting time under this section does not
31 create separate rights to visitation or physical care parenting
32 time for a person other than the parent. An order granting
33 assignment of visitation or physical care parenting time under
34 this section does not grant any custodial or parental rights to
35 any person who is not the parent of the child.

1 6. An order granted under this section may temporarily
2 assign visitation or physical care parenting time that is equal
3 to or less than the visitation or physical care parenting
4 time awarded to the parent whose visitation or physical care
5 parenting time is assigned.

6 ~~5.~~ 7. The parent whose visitation ~~rights are~~ or physical
7 care parenting time is temporarily assigned shall provide a
8 copy of the order granting assignment of visitation or physical
9 care parenting time to the school and school district of the
10 child to whom the order applies.

11 ~~6.~~ 8. An order granting temporary assignment of visitation
12 ~~rights~~ or physical care parenting time pursuant to this section
13 shall terminate upon notification of the court by the parent
14 or automatically upon the parent's completion of active duty,
15 whichever occurs first.

16 ~~7.~~ 9. After a parent completes active duty, if an
17 application for modification of a decree or a petition for
18 modification of an order is filed, the parent's absence due
19 to active duty or the assignment of visitation ~~rights~~ or
20 physical care parenting time does not constitute a substantial
21 change in circumstances, and the court shall not consider a
22 parent's absence due to that active duty or the assignment of
23 visitation ~~rights~~ or physical care parenting time in making a
24 determination regarding the best interest of the child relative
25 to such an application or petition filed after a parent
26 completes active duty.

27 ~~8.~~ 10. As used in this section, "*active duty*" means active
28 military duty pursuant to orders issued under Tit. X of the
29 United States Code. However, this section shall not apply to
30 active guard and reserve duty or similar full-time military
31 duty performed by a parent when the child remains in actual
32 custody of the parent.

33 11. As used in this section, "*parenting time*" means actual
34 time spent with the child as specified in a decree or order,
35 but does not include any other element of legal custody,

1 The bill takes effect upon enactment.